

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re: : Case No. CV 96-4849 (ERK)(MDG)
HOLOCAUST VICTIM ASSETS : (Consolidated with CV 96-5161 and
LITIGATION : CV 97-461)
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This Document Relates to: All Cases :
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***NOTICE OF SPECIAL MASTER'S INTERIM REPORT ON
DISTRIBUTION, RECOMMENDATION FOR ALLOCATION OF EXCESS
FUNDS, AND REQUEST FOR PROPOSALS FOR ALLOCATION OF
POSSIBLE UNCLAIMED RESIDUAL FUNDS***

On October 2, 2003, Special Master Judah Gribetz filed an Interim Report on
Distribution and Recommendation for Allocation of Excess and Possible Unclaimed
Residual Funds. The Interim Report, available in full at www.swissbankclaims.com, has
three purposes:

- The report provides the Court and class members with current information concerning the status of distributions from the \$1.25 billion Settlement Fund in connection with the Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan") (also available at www.swissbankclaims.com). Under the Settlement Agreement and Distribution Plan, distributions have been and continue to be made to members of the five Settlement Classes: the Deposited Assets Class, Slave Labor Class I, Slave Labor Class II, Refugee Class and Looted Assets Class.
- At the request of the Chief Judge, the Honorable Edward R. Korman, for a recommendation regarding the distribution of currently available excess funds, the report recommends that \$60 million in excess funds derived primarily from accrued interest should be allocated wholly to humanitarian assistance programs now serving needy Nazi victims under the terms of the original Distribution Plan.
- The report further recommends that should any residual unclaimed funds remain after all disbursements have been made in accordance with the Distribution Plan,

any such residual amounts should be allocated entirely to needy Nazi victims through humanitarian assistance programs.

By no later than **December 31, 2003**, any person or organization who seeks to offer a recommendation for distribution of possible unclaimed residual funds should mail such proposal to the following address: **Holocaust Victim Assets Litigation, P.O. Box 8300, San Francisco, California 94128-8300 (U.S.A.)**. Any comments on such proposals should be mailed to the same address by no later than **February 15, 2004**. Proposals and comments on such proposals will be made part of the public Court file, and/or posted by the Special Master on the Internet site for this lawsuit, www.swissbankclaims.com. On or about **March 15, 2004**, the Special Master will file final recommendations for distribution of possible unclaimed residual funds. The format for any proposals is specified at Section III below.

Any person or organization who wishes to comment upon the Special Master's recommendation to use unclaimed residual funds, if any, for needy Nazi victims should mail these comments to the address listed above on or before **December 31, 2003**.

I. Status of Distributions

As of the date of this interim report, approximately \$485 million has been distributed or allocated to class members. If the Court adopts the Special Master's recommendation on disbursement of the currently available \$60 million in excess funds, a total of \$545 million will have been distributed or allocated to date.

Approximately 350,000 claims have been filed. The following payments have been made to members of the five Settlement Classes thus far:

A. Deposited Assets Class:

- Almost **\$131.5 million** has been returned to bank account owners or their heirs in connection with **1,751 accounts** determined by the Court-supervised Claims Resolution Tribunal in Zurich (CRT), upon review of existing Swiss bank documents and other records, to belong to victims of the Holocaust.
- The vast majority of the account owners died in the Holocaust, fled from the Nazis, or survived ghettos and concentration camps. To date, approximately 40% of the recipients live in the United States. Approximately 15% of

recipients reside in Israel; 33% in Europe; and approximately 12% in other parts of the world.

- A total of 32,000 claims were filed in five different languages from claimants around the world. These claims are being assessed against a total of 36,000 Swiss accounts that were determined by a committee led by Paul A. Volcker, former Chairman of the United States Federal Reserve Bank, to have “probably” or “possibly” belonged to Holocaust victim (the “Accounts History Database”). The Volcker Committee concluded that 21,000 of the accounts “probably” belonged to Nazi victims; these accounts were published. Swiss banking authorities have not authorized publication of the 15,000 accounts “possibly” belonging to Nazi victims.
- To expedite claims processing, the Court has authorized the CRT to adopt a variety of legal “presumptions” which assist claimants in plausibly proving their entitlement to Swiss accounts. The Court also has authorized the CRT to modify its database and computer operations with the expectation that these revisions may help to locate additional “matches” between the 32,000 claims received and the 36,000 “probable” and “possible” accounts; to investigate archival records, especially those of the Austrian State Archives, to assist claimants in establishing that their claims are plausible, particularly where bank records are unavailable or incomplete; and to assess claim forms for which no bank data or other documentation has been made available but which nevertheless may present plausible claims. The CRT is expected shortly to begin to issue awards for such plausible but undocumented claims.
- CRT Special Masters Paul Volcker and Michael Bradfield and Lead Settlement Counsel Burt Neuborne continue to pursue access to the Total Accounts Database (“TAD”) – the 4.1 million Holocaust-era Swiss accounts located during the Volcker investigation but not yet made available to the CRT.

B. Slave Labor Class I:

- To date, over **\$200 million** has been paid to over **140,000** surviving slave laborers. Approximately 24% of the recipients reside in the United States; 46% in Israel; 21% in Europe; and 9% in other parts of the world. Among the claims remaining for processing are several thousand from survivors living in Central and Eastern Europe, who were required first to apply to their own national “Reconciliation Foundations.”
- The claims process for Slave Labor Class I generally follows the procedures adopted by the German Foundation “Remembrance, Responsibility and the Future” (the German slave labor settlement), maximizing administrative efficiencies and conserving Settlement Fund expenses. Under both the Swiss Banks Settlement and German Foundation programs, the application process was designed to rely heavily upon information concerning Holocaust

survivors already available from prior restitution programs. There have been certain areas of divergence between the Swiss Banks Settlement Fund and the German Foundation, with the Court compensating claimants from a number of camps and work sites not yet recognized by the Foundation.

C. Slave Labor Class II:

- **\$15,000** has been paid to **15** survivors of slave labor performed at a work site owned or operated by a Swiss company or affiliate. Until recently, litigation continued over whether slave labor-using entities acquired by Swiss companies after World War II qualified for releases under the Settlement Agreement.

D. Refugee Class:

- To date, nearly **\$4.6 million** has been paid to over **1,900** surviving refugees, including those expelled from Switzerland, denied entry at the border, denied a visa, or admitted but mistreated.
- Approximately one-half of the payments to date have been made to surviving refugees whose names appear on refugee lists provided to the Court by the Swiss Federal Archives. Those with otherwise plausible claims also have been eligible and have received payment.

E. Looted Assets Class:

- **\$145 million** has been distributed to or reserved for future disbursement by multi-year programs serving needy Jewish, Roma, Jehovah's Witness, homosexual and disabled Nazi victims, all of whom are presumed to have been looted by the Nazis. The Court has funded and supervised programs administered on behalf of Jewish Nazi victims by the American Jewish Joint Distribution Committee (JDC) in the former Soviet Union and by the Claims Conference in other parts of the world. Programs serving non-Jewish class members are administered by the IOM.
- Over hundred thousand needy Nazi victims have been assisted by these programs to date. Some of the services they have received include food packages, meals-on-wheels, hot meals at communal centers, medicine and medical equipment, home health care, clothing, and fuel.
- Through a new program administered by the IOM, over 50,000 elderly Roma and 2,000 Jehovah's Witness Nazi victims throughout Central and Eastern Europe have been assisted, most of whom never had previously received Holocaust compensation.

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Thus, in the little more than two years since judicial approval of the settlement and plan of allocation and distribution became final on July 26, 2001, when the United States Court of Appeals upheld the Distribution Plan, **approximately \$485 million has been distributed or allocated through direct payments and/or humanitarian aid to nearly a quarter of a million class members, the vast majority of whom are surviving victims of Nazi persecution; the other recipients are the heirs of owners of Swiss bank accounts.**

II. Allocation of Currently Available Excess Funds

As a result of interest accruing upon and tax exemptions granted to the \$1.25 billion Settlement Fund, the Special Master estimates that \$60 million in funds in excess of the amounts allocated under the Distribution Plan is currently available for immediate distribution. The Special Master has recommended that this amount should be allocated wholly to the “Looted Assets Class”: the humanitarian assistance programs currently funded by the Court and now providing food, shelter, medicine, winter relief and other care to the neediest Nazi victims. The Special Master has further recommended that the funds be allocated proportionately among the same “Victim or Target” groups and the same geographic regions as provided under the Distribution Plan and administered on the Court’s behalf by the JDC, Claims Conference and IOM. As always, the funds should be used only to augment, and not replace, existing amounts the organizations already receive from other sources.

III. Request for Proposals for Allocation of Possible Unclaimed Residual Funds

In addition to seeking the Special Master's views on allocation of excess funds, the Court also requested the Special Master to consider whether residual funds from those amounts initially allocated to members of the five plaintiff classes might remain unclaimed at the close of the administration period. If so, the Court asked for recommendations concerning the ultimate distribution of such residual funds.

Any such residual unclaimed funds would be derived primarily from the up to \$800 million allocated to the Deposited Assets Class under the Distribution Plan. In accordance with the Special Master's responsibilities, the Distribution Plan and the claims process, like the Settlement Agreement itself, have placed "priority upon returning to their rightful owners 'the sums that Swiss banks have been holding for them for more than half a century,'" a priority the Court determined to be "appropriate" when it adopted the Distribution Plan in its entirety. The Court more recently has described these claims as "the heart of this case." The Court of Appeals similarly recognized the preeminence of the Deposited Assets claims in upholding the Distribution Plan.

It is impossible at this time to predict with certainty whether the improved information resources described earlier in this summary will result in a significant increase in the ability of the CRT to identify Holocaust-era bank accounts for return to their owners, or whether current efforts to supplement the information available to CRT officials will succeed. Despite the best efforts of the Volcker Committee and the CRT, many Holocaust-era bank accounts may remain unclaimed, thereby establishing a pool of residual unclaimed funds. Given this possibility, the Special Master believes it is

appropriate to begin the process of developing guidelines governing the ultimate distribution of any such funds even if the amounts are not yet known.

The Special Master recommends that as with the excess funds, residual unclaimed funds, if any, likewise should be distributed to the neediest Nazi victims in rough proportion to their need. The Special Master has suggested that the Court solicit proposals from interested persons and organizations as to how best to identify and to benefit the neediest survivors. By the end of the proposed filing and comment period in connection with such proposals, the Special Master believes that reasonably firm Deposited Assets Class distribution projections should be available, rendering it possible to estimate the amount, if any, of unclaimed residual funds for distribution.

Accordingly, the Special Master has recommended that by December 31, 2003, any person or organization, including those currently operating under the auspices of the Court, wishing to deliver services to needy Nazi victims utilizing residual unclaimed funds provide a detailed plan describing the nature of any proposed aid program, the size, location and nature of the benefited population, and a proposed budget describing administrative costs and the cost of service delivery. The amount available could range from several million dollars to several hundred million dollars depending primarily upon the amount, if any, of the residual unclaimed funds allocated to the Deposited Assets Class.

Each proposal should specify at least the following information:

- 1. Number and location of Nazi victims for the proposed “Victim or Target” group to be served (e.g., Jewish, Roma, Jehovah’s Witness, homosexual and/or disabled), including (a) estimates of victims in Israel, the Former Soviet Union, Europe (including nation-by-nation), the United States (including state-by-state); Australia; South America and elsewhere; and**

(b) source materials upon which the data is based, including any expert opinion(s) relied upon;

2. Number and location of needy Nazi victims among the proposed “Victim or Target” group to be served, in accordance with the criteria set forth in item 3 below, including (a) estimates of victims in Israel, the Former Soviet Union, Europe (including nation-by-nation), the United States (including state-by-state); Australia; South America and elsewhere; and (b) source materials upon which the data is based, including any expert opinion(s) relied upon;
3. Assessment of survivor needs, including (a) analysis of specific requirements (e.g., medication, food, nursing care), taking into account different social safety nets available by geographic location and availability of other sources of assistance; (b) survivor longevity estimates by geographic location; and (c) absolute and relative poverty levels by geographic location, specifying, among other data, national statistics, United Nations and comparable non-governmental organization information;
4. Recommendation for distribution, specifying types of assistance, estimated number of recipients, length of program(s), and estimated costs (using percentages rather than specific dollar amounts where necessary);
5. Recommended distribution agency or agencies, including (a) description of prior experience with humanitarian aid distribution in general and programs serving Nazi victims in particular; (b) estimated administrative expenses (using percentages where necessary); and (c) where available, attach latest financial and/or other programmatic reports for recommended agency; and
6. Names, addresses and affiliations of all persons and organizations associated with or endorsing the proposal.

Proposals must be postmarked by **December 31, 2003**, and mailed to the following address so that they can be made part of the record in this case:

Holocaust Victim Assets Litigation
P.O. Box 8300
San Francisco, CA 94128-8300
U.S.A.

Comments on such proposals should be mailed to the same address and postmarked by **February 15, 2004**. Please note that proposals and comments on such proposals will be made part of the public Court file, and/or posted by the Special Master on the Internet site for this lawsuit, www.swissbankclaims.com. It is not necessary to re-send proposals previously filed in connection with any earlier notice in this case, such as allocation and distribution suggestions that may have been submitted to the Special Master prior to the announcement of the Plan of Distribution and Allocation of Settlement Proceeds (filed on September 11, 2000 and adopted by the Court on November 22, 2000). Previously filed proposals were and remain posted at www.swissbankclaims.com under the heading “Proposals and Comments on the Allocation and Distribution.”

Any person or organization who wishes to comment upon the Special Master’s recommendation to use unclaimed residual funds, if any, for needy Nazi victims should mail these comments to the address listed above. The comments should be postmarked by **December 31, 2003**.

The Special Master will file a report on or about **March 15, 2004**, updating information concerning distributions and, if the Court so requests, assessing the filed proposals and offering final allocation recommendations. At its discretion, the Court may schedule a public hearing on any issues raised by the proposals or the Special Master’s final recommendations prior to reaching a final determination.